

YPT and Delayed NPL Listing

Agenda Item 2

NDEP YPT Consultation Protocol

- a. History and overview
- b. Comparable process for reference
- c. Coordination and Consultation
- d. Current process

2.a History and Overview

- * A consultation agreement between NDEP and the Tribe was resolved by Tribal government in 2005
 - * The 2005 consultation agreement is applicable to the negotiations between ARC and NDEP
 - * The NDEP consultation agreement is not applicable to the CERCLA decision by the state since the Governor is the decision maker

For consultation regarding CERCLA status, the Governor is obligated to meet with the Chair and/or Council prior to decision making

- * This situation has indicated that the consultation policy requires updating
 - * Negotiations on a major modification to the agreement should be completed within the year
 - * Minor changes to clarify the current agreement may occur through MOUs

2.b. Comparable process for reference

- * Each Tribe has the right to exercise a unique process to meet the needs of their members and resources (Trust Rights), and can vary with different agencies
- * The Tribe is reaching out to Duck Valley regarding their experience with consultation during decision making activities at the State managed Rio Tinto site
- * EPA has proved an example for Region 10 that involves Tribes, we are waiting on details to reach out to those Tribes.
- * The Tribe is aware of the unique situation of the Anaconda Mine Site and understands that consultation needs differ from other EPA managed sites
- * EPA process is useful for additional guidance (see handout)
- * Federal guiding principles for respecting tribal sovereignty are also useful

2.c Coordination and Consultation

- * EPA definition: Consultation is a process of meaningful communication and coordination between EPA and tribal officials prior to EPA taking actions or implementing decisions that may affect tribes.
- * Coordination is sharing information, education, and outreach.
- * Coordination can be part of consultation.
- * Coordination cannot substitute for consultation

Today's meeting is coordination. It is important to ensure our decision makers are well informed and consultation will be effective

USDOT has a training module on Tribal consultation at:

https://www.fhwa.dot.gov/planning/processes/tribal/planning_modules/tribal_consultation/page01.cfm

2.D Current process

- * Consultation requires that the involved government agency and Tribe identify and carry all needs and concerns through the decision making process
- * The Tribe expects the concerns expressed in this process to be noted and integrated as part of future agreements
- * If the rule/agreement/action cannot address and integrate the needs identified in consultation, then the rule/agreement/action may not happen or be found to be ineffective
- * Consultation will really begin when an agreement is presented for review, a draft of the agreement with ARC is provided to the Tribe

Expectations for a Proposed Agreement

(5. Other specific issues for the Tribe)

- * To meet deadlines, the following items will need to be addressed in any agreement the Tribe is expected to review
- * These are not final terms, but a starting place in the process
- * Presented to reduce the back and forth on individual terms
- * NDEP will need to present a schedule for the process as soon as possible
- * The Tribe will recommend 60 days to review any document, 30 days for revisions as a practical consideration for timely consultation
- * The Tribe first requested to start this process in December
- * Agreeing to the attached terms will accelerate the process considerably...can put it on a 30 day review track since the terms are from the Tribal Council

Expectations for a Proposed Agreement

(5. Other specific issues for the Tribe)

- * Pay all current and expected future expenses (including historical) for water treatment on the Reservation
- * Fund community education through the Tribal education department
- * A supported economical development plan as the Tribe transitions to less water intensive industry
- * The Tribe signs off on Workplans, reports and other site documents that include decisions and principle work. In the event of disagreement, the Tribe agrees to defer to EPA for mediation.
- * All work will include onsite cultural monitors. A minimum of 4 monitors is recommended. The Tribe will certify cultural monitors.
- * Address use of mine waste as construction materials in YPT community (fill under houses, road base, etc.)
- * Complete a sitewide, comprehensive stormwater management plan and emergency response plan prior to deferral

Expectations for a Proposed Agreement

(5. Other specific issues for the Tribe)

- * Financially support the Tribal Environmental Department through the 6th 5-year review and define the regulatory role of the Tribe
- * Settle all NRDA claims. This can include a cooperative agreement to cover past and future assessment cost with funds for estimated damages set aside (method to be determined).
- * Agree to use CERCLA and UMTRA requirements, which ever provides the higher level of protection
- * The Tribe approves all seed mixes and other components of revegetation plans
- * Have a local and tribal preference for site contractors; all contractors should be bid out by the State and administered through the State